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|  | <h2 style="margin: 0;">PROPOSED RULE MAKING</h2> | <h3 style="margin: 0;">CR-102 (June 2004)</h3> <p style="margin: 0;">(Implements RCW 34.05.320)</p> <p style="margin: 0;">Do NOT use for expedited rule making</p> |
| Agency: Department of Labor and Industries | | |
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 04-10-044 _____ ; or <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____ ; or <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4). | | <input checked="" type="checkbox"/> Original Notice <input type="checkbox"/> Supplemental Notice to WSR _____ <input type="checkbox"/> Continuance of WSR _____ |
| Title of rule and other identifying information: (Describe Subject) Claimant Willful Misrepresentation See Attachment 1 | | |
| Hearing location(s): Spokane, Yakima, Tukwila and Vancouver See Attachment 2 Date: _____ Time: _____ | | Submit written comments to: Name: Valerie Grimm Address: P O Box 44208 Olympia WA 98504-4208 e-mail <u>colb235@lni.wa.gov</u> fax (360) <u>902-5005</u> by <u>August 17, 2004</u> |
| Date of intended adoption: <u>September 28, 2004</u> (Note: This is NOT the effective date) | | Assistance for persons with disabilities: Contact <u>Valerie Grimm</u> by <u>August 9, 2004</u> TTY (800) <u>833-6388</u> or (360) <u>902-5005</u> |
| Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rules will assist in the assist in the implementation of Chapter 243, Laws of 2004 (ESHB 3188). The purpose of the proposed rules is to: <ul style="list-style-type: none"> • Define terms used in the statute, and • Clarify when and how wages are imputed, and • Clarify when and how overpayments are established | | |
| Reasons supporting proposal: The proposed rules will provide a consistent means for implementing the statutory change, thus reducing inconsistent interpretation and application of the law and potentially unnecessary litigation. | | |
| Statutory authority for adoption: RCW 51.04.010, RCW 51.04.020, RCW 51.32.240 and Chapter 243, Laws of 2004 (ESHB 3188) | | Statute being implemented: RCW 51.32.240 |
| Is rule necessary because of a: Federal Law? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Federal Court Decision? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No State Court Decision? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, CITATION: | | CODE REVISER USE ONLY WSR#04-14-082 |
| DATE July 6, 2004 | | |
| NAME (type or print) Paul Trause | | |
| SIGNATURE | | |
| TITLE Director | | |

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

The proposed rules will provide a consistent means for implementing the statutory change, thus reducing inconsistent interpretation and application of the law and potentially unnecessary litigation.

Name of proponent: (person or organization) Department of Labor and Industries

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|--------------------|------------------|-----------------|----------------|
| Drafting..... | Vickie Kennedy | Tumwater WA | (360) 902-4997 |
| Implementation.... | Carl Hammersburg | Tumwater WA | (360) 902-6536 |
| Enforcement..... | Carl Hammersburg | Tumwater WA | (360) 902-6536 |

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared.

In the adoption of a rule under (chapter 34.05 RCW), an agency shall prepare a small business economic impact statement if the proposed rule will impose more than minor costs on businesses in an industry (RCW 19.85.030(1)(a)). Since these rules, and any associated costs apply only to individuals who fail to comply with existing law, compliance is without cost and no SBEIS is required.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:

phone () _____
fax () _____
e-mail _____

☒ No: Please explain:

When an agency adopts a significant legislative rule, the agency must “determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.” (RCW 34.05.328(1)(d)) Since these rules, and any associated costs apply only to individuals who fail to comply with existing law, compliance is without cost and no CBA is required.

CR-102**Industrial Insurance, chapter 296-14 WAC (Claimant Willful Misrepresentation)****Attachment (1)****Other Identifying information:****New Sections:****WAC 296-14-4121 What does the term "willful misrepresentation" mean with regard to the receipt of workers' compensation benefits?**

- Provides definition of willful misrepresentation.

WAC 296-14-4122 For the purposes of determining willful misrepresentation, what does the term "specific intent" mean?

- Provides definition of specific intent.

WAC 296-14-4123 What is meant by "work-type activity"?

- Provides definition of work-type activity.

WAC 296-14-4124 What are considered "wage replacement benefits"?

- Provides definition of wage replacement benefits.

WAC 296-14-4125 How does the department calculate the amount of overpayment charged to a claimant when a determination of "willful misrepresentation" has been made in the initial claim adjudication?

- Provides guidelines on how the department calculates overpayments when willful misrepresentation occurs at initial claim adjudication.

WAC 296-4126 How does the department calculate the amount of overpayment charged to a claimant when a determination of "willful misrepresentation" has been made after initial claim adjudication?

- Provides guidelines on how the department calculates overpayments when willful misrepresentation occurs after initial claim adjudication.

WAC 296-14-4127 How are penalties determined?

- Provides how the department calculates penalties based on existing law.

WAC 296-14-4128 When may the department impute wages in cases where willful misrepresentation has been determined?

- Provides guidelines to determine when the department may impute wages.

WAC 296-14-4129 How will imputed wages be determined?

- Provides guidelines on how the department will impute wages.

CR-102**Industrial Insurance, chapter 296-14 WAC (Claimant Willful Mirepresentation)****Attachment (2)**

Hearing Locations:

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| <p>Spokane</p> <p>Ramada Inn Inland Empire Room 8909 Airport Road Spokane WA 99219 509-838-5211</p> <p>Date: August 10, 2004 Time: 1 to 2:30 p.m.</p> | <p>Yakima</p> <p>Red Lion Yakima Gateway Plum Room 9 N 9th St Yakima WA 98901-2522 509-452-6511</p> <p>Date: August 11, 2004 Time: 1 to 2:30 p.m.</p> |
| <p>Tukwila</p> <p>Department of Labor and Industries Tukwila Office Training Room 12806 Gateway Dr Tukwila WA 98168-3311 206-835-1000</p> <p>Date: August 16, 2004 Time: 1 to 2:30 p.m.</p> | <p>Vancouver</p> <p>Red Lion Hotel at the Quay West River Rooms 1 & 2 100 Columbia Vancouver WA 98660 360-750-4940</p> <p>Date: August 17, 2004 Time: 1 to 2:30 p.m.</p> |